

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEBORAH CAHILL, M.D.,

Plaintiff,

No.

vs.

FRANCISCAN HEALTH SYSTEM, a  
Washington non-profit corporation,

Defendant.

**DEFENDANT'S NOTICE OF  
REMOVAL**

## **NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, defendant Franciscan Health System (“defendant”), hereby removes this action from the Superior Court, County of Pierce, where it is currently pending, to the United States District Court for the Western District of Washington at Tacoma. As addressed below, federal question jurisdiction exists in this action. *See* 28 U.S.C. § 1331. In support of this removal, defendant states as follows.

## INTRODUCTION

23       1. Plaintiff commenced this action on or about July 25, 2012, by filing a  
24 complaint against defendant in the Superior Court, County of Pierce, bearing cause No. 12-2-  
25 11266-1. On August 23, 2012, defendant was served with the complaint. Copies of all  
26 pleadings, processes and orders in the state court are attached hereto as **Exhibit A**.

2. In her complaint, plaintiff alleges that defendant denied her application for medical staff privileges based on a disability, an asserted violation of the federal Rehabilitation Act, 29 U.S.C. § 794(a); Title III of the Federal Americans with Disability Act (ADA), 42 U.S.C. § 12181, *et seq.*; the Washington Law Against Discrimination (WLAD); RCW 49.60 *et seq.*; and Washington's Consumer Protection Act (CPA), RCW 19.86 *et seq.* Plaintiff also asserts that the alleged denial of her application constitutes the tort of interference with business expectancy.

3. As set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441(a) because this Court has original jurisdiction over this action pursuant to § 1331, and because defendant has satisfied the procedural requirements for removal.

## **GROUND FOR REMOVAL**

**A. This Court has Jurisdiction over each of the Claims in this Case Pursuant to Federal Question and Supplemental Jurisdiction.**

4. Pursuant to federal question jurisdiction, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. In addition, pursuant to supplemental jurisdiction:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have subject matter jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a).

5. Federal question jurisdiction has been clearly invoked in this case. In her complaint, plaintiff alleges disability discrimination pursuant to two federal anti-discrimination statutes: the Federal Rehabilitation Act, 29 U.S.C. § 794(a); and the ADA, 42 U.S.C. § 12181, *et seq.* Plaintiff's claims under these statutes give rise to the original jurisdiction of this Court. 28 U.S.C. § 1331.

6. In addition, this Court has supplemental jurisdiction over plaintiff's remaining state law claims. Each of these claims - under the WLAD and Washington's CPA, and for

1 tortious interference with business expectancy - arise out of the same factual allegations that  
2 give rise to plaintiff's asserted federal claims. As such, the state law claims are a part of the  
3 same case or controversy as are the federal claims, and this Court has supplemental  
4 jurisdiction over each of them. *See 28 U.S.C. § 1367(a); Wisconsin Dept. of Corrections v.*  
5 *Schacht*, 524 U.S. 381, 387, 118 S. Ct. 2047 (1998) (Holding that, in cases involving both  
6 federal and state law claims, state law claims fall within the supplemental jurisdiction of the  
7 federal courts).

8       7. Because this Court has original jurisdiction of this action, removal is proper  
9 under 28 U.S. § 1441(a) (Stating that "any civil action brought in State court of which the  
10 district courts of the United States have original jurisdiction, may be removed by the  
11 defendant or the defendants, to the district court...").

12 **B. The Other Prerequisites for Removal have been satisfied.**

13       8. In addition to satisfying the requirements of federal question jurisdiction,  
14 defendant has satisfied all procedural requirements for removal.

15       9. Removal is timely because less than 30 days have passed since service of the  
16 Summons and Complaint on Defendant on August 23, 2012. (*See* Return of Service, included  
17 in **Exhibit A**); 28 U.S.C. § 1446(b).<sup>1</sup>

18       11. Venue for removal is proper in this district and division pursuant to 28 U.S.C.  
19 § 128(b) and 28 § 1441(a) because this district and division embrace the Superior Court of  
20 Washington, County of Pierce, the forum in which the removed action is currently pending.

21       12. In accordance with 28 U.S.C. § 1446(d), defendant will promptly provide  
22 notice of the filing of this Notice of Removal to the plaintiff and shall file a copy of this  
23 Notice along with a Notice of Filing of Notice of Removal with the Clerk of the Superior

24  
25       1 In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders in the state court action is  
26 attached hereto collectively as **Exhibit A**.

1 Court of Washington, County of Pierce, where this action is currently pending (attached  
2 hereto as **Exhibit B**).

3 WHEREFORE, defendant gives notice that the matter bearing Civil No. 12-2-11266-1  
4 in the Superior Court of Washington, County of Pierce, is removed to the United States  
5 District Court for the Western District of Washington at Tacoma, and requests that this Court  
6 retain jurisdiction for all further proceedings in this matter.

7 DATED this 14 day of September, 2012.

8  
9 BENNETT BIGELOW & LEEDOM, P.S.

10  
11 By   
12 Bruce Megard, WSBA #27560  
13 Michael Madden, WSBA #8747  
14 Attorneys for Defendant  
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that she is now, and at all times material hereto, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein.

I caused to be served this date the foregoing in the manner indicated to the parties listed below:

Kenneth S. Kagan, WSBA #12983  
Elizabeth K. Maurer, WSBA #21973  
Carney Badley Spellman  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104-7010

- Legal Messenger
- Facsimile
- Email
- 1<sup>st</sup> Class Mail
- Federal Express

Attorneys for Plaintiff

Dated in Seattle, Washington this 14<sup>th</sup> day of September, 2012.

Lori J. Yhiguez  
Legal Assistant

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